

ASSEMBLY BILL

No. 498

Introduced by Assembly Member Haynes

February 16, 2005

An act to add Section 4059.5 to the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

AB 498, as introduced, Haynes. Child support guidelines: National Guard members.

Existing law establishes a statewide uniform guideline for determining child support. These provisions calculate child support on the basis of the annual net disposable income of each parent. In order to determine this amount, a court must deduct from the annual gross income certain items, such as tax liability and job-related expenses. In addition, a court may allow other income deductions on the basis of financial hardship, as specified.

This bill would provide that the annual net disposable income of a parent who is on active duty as a member of the National Guard shall be calculated on the basis of his or her gross income from the National Guard for each month or part of a month during that year that the parent is on active duty, as specified. The bill would require a court to modify any current order for support that does not comply with that provision. The bill would provide for the rescission of certain penalties imposed upon a parent for his or her failure to make payments as ordered pursuant to a child support order that does not comply with that provision, as specified. The bill would also apply retroactively, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 4059.5 is added to the Family Code, to read:

4059.5. (a) For purposes of Section 4059, the portion of the annual net disposable income of a parent that is attributable to each month or part of a month during the year that the parent is on active duty as a member of the National Guard, shall be computed on the basis of his or her gross income from the National Guard, plus any other income actually paid to that parent during his or her period of active duty service. All applicable deductions authorized pursuant to Section 4059 or any other provision of law governing child support shall apply.

(b) (1) The court shall modify any current order for child support that does not comply with subdivision (a) of this section.

(2) The court shall rescind any penalties imposed upon a parent for his or her failure to make payments as ordered pursuant to a child support order that is not in accordance with subdivision (a). Any penalties already paid by that parent shall be credited toward his or her next child support payment. In any case in which a court determines that the parent does not have any child support obligations, that parent may seek a court order for the refund of the total amount of any penalties rescinded pursuant to this section from the person or entity to whom those penalties were paid.

(c) This section shall apply retroactively to the extent necessary to ensure that any parent who was on active duty as a member of the National Guard from 2003 to 2005, inclusive, while he or she was a resident of California may seek a modification of a child support order that does not comply with subdivision (a) and the rescission of any resulting penalties, as authorized pursuant to subdivision (b).